



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/998,661
Applicant : Todd Charles MCNEEL et al.
Filed : December 3, 2001
TC/A.U. : 1761
Examiner : Robert A. Madsen

Docket No. : 914-1412-DV2
Customer No. : 6449
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REPLY BRIEF UNDER 37 C.F.R. §41.41

MS Appeal Brief-Patents

Commissioner for Patents
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This Reply Brief is filed in response to the Examiner's Answer dated December 2, 2004.

In Appellants' Appeal Brief filed on September 16, 2004, Appellants demonstrated that the cited prior art (Wisdom '198, Hilton '838, Khalsa '274, and MacKendrick '248) fail to teach or suggest all of the limitations of Appellants' claimed invention. In particular, none of the cited references teach or suggests the steps of

enclosing the [triangular] tortilla chip preforms in molds with a consistent orientation, restraining the tortilla chip preforms within said molds while cooking the tortilla chip preforms in a cooking medium, thereby substantially maintaining the orientation of the tortilla chip preforms while they are being cooked, and then removing cooked tortilla chips from said molds while substantially maintaining the orientation of the tortilla chip preforms; wherein said consistent orientation comprises an alternating pattern of tortilla chip preforms with base edges and apex corners of successive tortilla chip preforms within the molds alternating orientation

The Examiner's Answer fails to demonstrate that any of the cited references do teach the use of triangular molds or arranging the molds in alternating orientations. While MacKendrick, Wisdom, and Hilton may each include some teaching or suggestion with respect to the use of molds and the formation of stackable chips, none of them suggests the use of such technology for creating uniformly shaped, stackable triangular tortilla chips. And while Khalsa describes a process whereby the masa dough can be cut into triangular preforms

having alternating orientations, there is no suggestion of cooking the preforms while restrained within triangular molds that are arranged in alternating orientations.

Furthermore, with respect to an alleged motivation to combine provided in the cited prior art references, the Examiner states that "MacKendrick teaches when frying the chips in the mold, the mold should match the cutting pattern of the dough (i.e., the base edges and apex corners of successive tortilla chips are in alternating orientation for the triangular shapes of Khalsa) to obtain uniformly shaped fried chips, and *uniform* chips would facilitate subsequent packaging in a stack arrangement." Answer at page 6, (*emphasis in original*). Appellants respectfully disagree. There is no suggestion, simply because MacKendrick teaches that the molds should match the cutting pattern of the dough, to provide molds matching the cutting pattern of Khalsa, which is not a uniformly-shaped, stackable chip.

Moreover, the Examiner states that "[i]f it is possible to produce a uniform stackable rectangular (e.g. Wisdom) or even circular/saddle shaped chip (e.g. Hilton), absent any showing of the contrary, one would expect it possible to produce a uniform triangle shape, especially since Hilton et al. teach molding the dough during frying achieves a uniform shape and MacKendrick teaches such molds matching the cutting pattern of the dough will assure a uniform shape." Answer at 6. The Examiner has failed to cite any evidentiary support for this "expectation" and, in fact, the cited references do not support this allegation.

Contrary to the assertion made in the Examiner's Answer, Wisdom does not disclose a process whereby stackable rectangular chips are fried while being retained in a mold. Wisdom describes an example of the selective toasting process described therein as follows:

The present invention will be further illustrated by the following example of a manner of obtaining the product. Corn masa was extruded onto a conveyor as a ribbon about 15 centimeters wide and 0.76 to 0.89 millimeters thick. The ribbon was partially dried in a heated oven to approximately 20% moisture. The ribbon was cut into pieces 5 centimeters wide and 6 centimeters long. The cut pieces were passed between two steel plates lying horizontally, one above the other, and separated by approximately 0.64 centimeter. The upper steel plate had a hole slightly larger than about 1.6 centimeters in diameter. Each corn piece was passed beneath the hole, and its upper, flat surface was contacted with a red-hot metal rod having a temperature of about 400°C. and a diameter of about 1.6 centimeters which was inserted through the

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hole in the overlying steel plate. The hot end of the rod contacted with the corn pieces had a slightly raised porting forming a design of letters, and was held in contact with each corn piece for about 3 seconds to toast an area corresponding to the design and which covered approximately 20% of the surface area of one side of the corn pieces. The pieces were then fried in oil for about 30 seconds at 204°C. The fried corn pieces were salted and exhibited a definite and pleasing toasted flavor along with good appearance and texture.

Wisdom '198, column 4, lines 12-37.

The example described in Wisdom is not a molding process. Note that the pieces were cut from a ribbon having a thickness of 0.76 to 0.89 millimeters. Those pieces were then passed between horizontal steel plates separated by approximately 0.64 centimeters (i.e., 6.4 millimeters), which is roughly 7 to 8 times the thickness of the pieces. The pieces were, one by one, moved beneath a hole formed in the upper plate, and a red-hot rod was passed through the hole and placed in contact with the piece for 3 seconds to toast an area covering approximately 20% of the surface area of each of the pieces. The pieces were then fried in oil for about 30 seconds.

Furthermore, the molds described in Hilton and MacKendrick are circular or oval and are thus symmetric from end-to-end and side-to-side, unlike a triangular mold. Thus, there is no suggestion in the cited art of using triangular molds or arranging such molds in alternating orientations. The suggestion that the cited art could be combined to render the claimed invention obvious is an improper hindsight reconstruction of the claimed invention.

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For the foregoing reasons, and for the reasons set forth in Appellants' opening brief, it is respectfully requested that the rejections set forth in the Office Action of June 2, 2004 be reversed.

Respectfully submitted,

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